

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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UNITED STATES OF AMERICA,

-against-

JOSE RIVERA,

Defendant.

1:22-cr-00329-MKV

SCHEDULING ORDER

MARY KAY VYSKOCIL, United States District Judge:

On January 5, 2023, Jose Rivera (“Defendant”) was sentenced principally to a term of imprisonment of a total of 107 months following his plea of guilty to charges relating to conspiracy to distribute and possess crack cocaine, unlawful possession of a firearm in a school zone, and use, carrying, and possession of a firearm during a drug trafficking offense. The Defendant’s sentencing guidelines range was 46 to 57 months, plus up to 60 months on Count 2, to run consecutively, plus 60 months on Count 3, to run consecutively, based on an offense level of 21 and a criminal history category of III. The Bureau of Prisons currently projects that the Defendant will be released from prison on August 16, 2029.

Effective November 1, 2023, in its Amendment 821, the United States Sentencing Commission (“Sentencing Commission”) amended the United States Sentencing Guidelines Manual in two respects. Part B amends Guidelines § 4C1.1, by providing a 2-level offense level reduction for offenders with zero (0) criminal history points who meet specified eligibility criteria. Part A, as relevant here, amends Guidelines § 4A1.1, by reducing from two (2) points to one (1) point the upward adjustment for offenders who committed the current offense while under any criminal sentence, and by limiting this adjustment to defendants who received seven (7) or more criminal history points. The Sentencing Commission made these amendments retroactive effective

November 1, 2023. Defendants whose requests are granted by the courts can be released from prison no earlier than February 1, 2024.

The Defendant has made a motion for reduction in his sentence and requested the appointment of counsel. [ECF No. 31]. The Probation Department has issued a report indicating the Defendant is eligible for a reduction. [ECF No. 30].

Pursuant to the standing order of the Chief Judge of this District, the Federal Defenders of New York has been appointed to represent the Defendant in connection with the Defendant's motion for a reduction in his sentence in light of Amendment 821.

IT IS HEREBY ORDERED that no later than May 9, 2024, the Government shall file a statement of its position on the motion for modification of the Defendant's sentence.

IT IS FURTHER ORDERED that the Defendant shall file his response, if any, no later than May 23, 2024.

The Court's intention, unless it orders otherwise, is to resolve this motion based on the parties' written submissions.

SO ORDERED.

Dated: April 25, 2024
New York, NY


MARY KAY VYSKOCIL
United States District Judge

cc: Jennifer Brown, Esq., Federal Defenders of New York